



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90529; File No. SR-NYSEArca-2020-100]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Perth Mint Physical Gold ETF

November 30, 2020.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”),² and Rule 19b-4 thereunder,³ notice is hereby given that on November 20, 2020, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to reflect (i) a change in the sponsors and the custodian of the Perth Mint Physical Gold ETF, which will be renamed as the Goldman Sachs Physical Gold ETF⁴ (“Trust”), (ii) the elimination of an investor’s ability to take delivery of Physical Gold, and (iii) in connection with the change of custodian, the removal of the Government Guarantee, and to amend certain other representations in the proposed rule change filed with and approved by the Securities and Exchange Commission (“Commission”) relating to listing and trading of Shares of the Trust on the Exchange. Shares of the Trust have been approved by the

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ Upon the closing of the Sponsorship Transfer Agreement (defined in note 7, *infra*), the name of the Trust will be changed from “Perth Mint Physical Gold ETF” to “Goldman Sachs Physical Gold ETF”.

Commission for listing and trading on the Exchange under NYSE Arca Rule 8.201-E.⁵ The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission has approved a proposed rule change relating to listing and trading on the Exchange of shares (“Shares”) of the Trust for listing and trading on the Exchange under NYSE Arca Rule 8.201-E (“Commodity-Based Trust Shares”).⁶ The Exchange proposes to reflect (i) a change in the sponsors and the custodian of the Trust, (ii) the elimination of an investor’s ability to take delivery of Physical Gold, and (iii) in connection with the change of

⁵ See note 6, *infra*.

⁶ See Securities Exchange Act Release Nos. 82372 (December 21, 2017), 82 FR 61601 (December 28, 2017) (SR-NYSEArca-2017-140) (NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade Shares of the Perth Mint Physical Gold ETF Trust Under NYSE Arca Rule 8.201–E) (“First Prior Notice”); 82593 (January 26, 2018), 83 FR 4718 (February 1, 2018) (SR-NYSEArca-2017-140) (Order Approving a Proposed Rule Change To List and Trade Shares of the Perth Mint Physical Gold ETF Trust Pursuant to NYSE Arca Rule 8.201–E) (“Prior Order” and, together with the Prior Notice, the “First Prior Releases”). See also, Securities Exchange Act Release No. 83248 (May 15, 2018), 83 FR 23494 (May 21, 2018) (SR-NYSEArca-2018-32) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Proposed Operation of the Perth Mint Physical Gold ETF Trust) (“Second Prior Release” and, together with the First Prior Releases, the “Prior Releases”).

custodian, the removal of the Government Guarantee, and to amend certain other representations in the proposed rule change filed with and approved by the Commission relating to listing and trading of Shares of the Trust on the Exchange.⁷ The Trust will continue to comply with all initial and continued listing requirements under NYSE Arca Rule 8.201-E. Except for the changes noted below, all other representations made in the Prior Releases remain unchanged.⁸

Change to the Trust's Investment Objective

The First Prior Notice stated that the Trust's primary objective will be to provide investors with an opportunity to invest in gold through the Shares, have the gold securely stored by Gold Corporation and, if requested by an investor, deliver Physical Gold to such investor in exchange for its Shares. The Second Prior Release stated, however, that, because investors redeeming Shares would deliver Shares to the Gold Corporation rather than to the Trust, the Trust's primary objective will be to provide investors with an opportunity to invest in gold through the Shares and have the gold securely stored by Gold Corporation; and that the Gold Corporation rather than the Trust will be the entity that is responsible for and delivers Physical Gold to investors in exchange for Shares.

The Exchange proposes to change these representations regarding the Trust's investment objective to state that the Trust's investment objective is for the Shares to reflect the performance

⁷ On June 11, 2019 the Trust filed with the Commission a registration statement on Form S-1 under the Securities Act of 1933 relating to the Trust (File No. 333- 224389) ("Registration Statement"). The Registration Statement was declared effective by the SEC on June 20, 2019. The description of the operation of the Trust herein is based, in part, on the Registration Statement. The procedures described in this proposed rule change will not be implemented until such proposed rule change is effective and operative and such changes will be reflected in a prospectus to the Registration Statement. On September 29, 2020, Perth Mint Physical Gold Trust filed with the Commission Form 8-K (the "8-K") under the Act relating to an agreement, also dated September 29, 2020, to transfer the role of sponsor from Gold Corporation and Exchange Traded Concepts, LLC to Goldman Sachs Asset Management, L.P. (such agreement, the "Sponsorship Transfer Agreement").

⁸ See note 6, *supra*. All terms referenced but not defined herein are defined in the Prior Releases.

of the price of gold less the expenses of the Trust's operations, thus deleting reference to delivery of Physical Gold to an investor in exchange for Shares.

Change to Custodian and Sponsors

The Prior Notice stated that the sponsors of the Trust are the Gold Corporation and Exchange Traded Concepts, LLC. The Exchange proposes to change this representation to state that the Trust's sponsor ("Sponsor") will be Goldman Sachs Asset Management, L.P. Goldman Sachs Asset Management, L.P. will take on the responsibilities previously performed by both the Gold Corporation (in its role as custodial sponsor) and Exchange Traded Concepts, LLC (in its role as administrative sponsor).⁹ Although the sponsors of the Trust will change upon the closing of the Sponsorship Transfer Agreement, the Trust itself will remain in place and continue to issue and redeem Shares in Creation Unit sizes to Authorized Participants.¹⁰

⁹ All references in the Prior Releases to "Sponsors" would be replaced by "Sponsor". In addition, reference to "Administrative Sponsor" in the Prior Releases would be replaced by "Sponsor", as applicable.

¹⁰ The Second Prior Release stated that the Trust will issue and redeem "Baskets" equal to a block of 50,000 Shares and that the size of a Basket is subject to change. In the Registration Statement, the Trust described its change of the size of a Basket to 25,000 Shares. The Second Prior Release stated further that a reduction in the size of a Basket may provide potential benefits to investors by facilitating additional creation and redemption activity in the Shares, thereby potentially resulting in increased secondary market trading activity, tighter bid/ask spreads and narrower premiums or discounts to net asset value ("NAV"). The Trust's change to a Basket size of 25,000 Shares is consistent with the August 8, 2018 letter from the Division of Trading and Markets granting no-action relief to certain commodity-based investment vehicles from Rules 101 and 102 of Regulation M under the Act. See footnote 2 to letter, dated August 8, 2018, from Josephine J. Tao, Assistant Director, Division of Trading and Markets, to Eric Simanek, Sullivan & Worcester LLP. The Exchange notes that the Commission has approved the listing and trading of other issues of Commodity-Based Trust Shares that have applied a minimum "Creation Unit" size of less than 50,000 shares. See, e.g., Securities Exchange Act Release Nos. 82249 (December 8, 2017), 82 FR 58884 (December 14, 2017) (SR-NYSEArca-2017-110) (Notice of Filing of Amendment No. 2 and Order Approving on an Accelerated Basis a Proposed Rule Change, as Modified by Amendment No. 2, to List and Trade Shares of the GraniteShares Platinum Trust under NYSE Arca Rule 8.201-E); 81918 (October 23, 2017), 82 FR 49884 (October 27, 2017) (SR-NYSEArca-2017-98) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to List and Trade Shares of The Gold Trust under NYSE Arca Rule 8.201-E); 80840 (June 1, 2017), 82 FR 26534 (June 7, 2017) (SR-NYSEArca-2017-33) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 2

The Registration Statement stated that the custodian of the Trust is the Gold Corporation. The Exchange proposes to change this representation to state that the Trust's custodian will be JPMorgan Chase Bank, N.A. (“Custodian”), which will take on all of the responsibilities of the Gold Corporation (in its role as custodian).¹¹

Change to Taking Delivery of Physical Gold by Investors

The Prior Releases described procedures permitting an investor to take delivery of Physical Gold in exchange for its shares, provided the investor follows certain procedures set out in the Registration Statement. In connection with the replacement of the custodian of the Trust, the Exchange proposes to eliminate an investor’s ability to take delivery of Physical Gold. Therefore, all references in the Prior Releases regarding investors taking delivery of Physical Gold will no longer be in effect.¹² The Trust's investment objective is for the Shares to reflect the performance of the price of gold less the expenses of the Trust’s operations. Further, Goldman Sachs Asset Management, L.P. represents that the option to take delivery of Physical Gold has been utilized only 12 times since the inception of the Trust. Given the limited use of this feature and the fact that investors have been notified through the 8-K that this feature will be removed, this change will not impact investors’ ability to invest in a product that reflects the

There to, to List and Trade Shares of the Euro Gold Trust, Pound Gold Trust, and the Yen Gold Trust under NYSE Arca Equities Rule 8.201).

¹¹ In regard to the role of the Custodian, footnote 8 of the First Prior Notice stated the following: “As Custodian of the Trust’s gold bullion, Gold Corporation will be responsible for the safekeeping of the Trust's gold and supplying inventory information to the Trustee and the Sponsors. The Custodian will also be responsible for facilitating the transfer of gold in and out of the Trust and facilitating the shipment of Physical Gold to Delivery Applicants.” The Exchange proposes to change this representation to the following: “As Custodian of the Trust’s gold bullion, the Custodian will be responsible for the safekeeping of the Trust's gold and supplying inventory information to the Trustee and the Sponsor.” A prospectus to the Registration Statement will be filed at the closing of the Sponsorship Transfer Agreement incorporating the changes listed herein.

¹² Procedures regarding delivery of Physical Gold to investors are described in the following sections of the First Prior Notice: “Permitting Investors to Take Delivery of Physical Gold,” “Taking Delivery of Physical Gold – Delivery Applicants” and “Delivery Application”; and in the following section of the Second Prior Release: “Changes to Representations Regarding Delivery Applicants.”

performance of the price of gold less the expenses of the Trust's operations. The Exchange notes that, except as described in this proposed rule change, procedures relating to creation and redemption of Shares as applied to Authorized Participants, as described in the Prior Releases, will remain unchanged.¹³

Change to Representation Regarding the Government Guarantee

The Prior Notice referred to a Government Guarantee provided by the State of Western Australia¹⁴ and stated that the Government Guarantee applies to all gold held by the Custodian or sub-custodian, whether in the Trust Allocated Metal Account, the Trust Unallocated Metal Account, the “GC Metal Account” or in a Customer Account, for the benefit of the Trust or an investor who is the Gold Corporation’s direct customer. The Government Guarantee applies only to Physical Gold held in The Perth Mint's vaults.

As the Custodian is not affiliated with the State of Western Australia, the Custodian intends to substitute the Government Guarantee with insurance on the Physical Gold held by the Custodian or a sub-custodian. The Custodian has represented that it will maintain adequate insurance from reputable and solvent insurers of international standing that is customary with

¹³ The Exchange notes that the Commission has previously approved Exchange listing and trading of shares of gold trusts under NYSE Arca Rule 8.201-E without the ability of individual investors to receive Physical Gold from a trust outside the redemption process utilized by Authorized Participants. See e.g., Securities Exchange Act Release Nos. 81077 (July 5, 2017), 82 FR 32024 (July 11, 2017) (SR-NYSEArca-2017-55) (order approving listing and trading shares of the GraniteShares Gold Trust under NYSE Arca Equities Rule 8.201; 75918 (December 9, 2016), 81 FR 90876 (December 15, 2016) (SR-NYSEArca-2016-84) (order approving listing and trading of shares of the Long Dollar Gold Trust Under NYSE Arca Equities Rule 8.201); 80840 (June 1, 2017), 82 FR 26534 (June 7, 2017) (SR-NYSEArca-2017-33) (order approving listing and trading of shares of the Euro Gold Trust, Pound Gold Trust, and the Yen Gold Trust Under NYSE Arca Equities Rule 8.201).

¹⁴ See note 29 of the Prior Notice, which stated that the Gold Corporation, doing business as the Perth Mint, is a Western Australian Government owned statutory body corporate established by the Gold Corporation Act 1987 (Western Australia) (the “WA Act”). The Government Guarantee provided by the State of Western Australia pursuant to Section 22 of the WA Act provides (among other things) that the payment of the cash equivalent of gold due, payable and deliverable by the Custodian under the WA Act is guaranteed by the Treasurer of Western Australia, in the name and on behalf of the Crown in the right of the State of Western Australia.

other single-asset commodity-based Exchange Traded Products. Moreover, the costs of insuring the Physical Gold held by the Custodian or a sub-custodian will be assumed by the Custodian and not the Trust directly. The Trust's expense ratio will not change as a result of the new Custodian being appointed. Accordingly, the Exchange proposes to change this representation to state that the Government Guarantee referenced in the Prior Releases is eliminated. Because the Custodian intends to provide insurance to the Trust for the Physical Gold held by the Custodian or a sub-custodian, the removal of the Government Guarantee will not impact investors' ability to invest in the Shares.

Change to Representation Regarding Delivery of Required Deposits

The First Prior Notice stated that an Authorized Participant who places a purchase order is responsible for crediting the Trust Unallocated Metal Account with the required gold deposit amount by 9:00 a.m. London time on the third business day following the purchase order date. The Exchange proposes to change the above reference from 9:00 a.m. London time to 8:00 a.m. London time.

In addition, in connection with information regarding the required gold deposit, the Exchange proposes that the Sponsor shall publish, or shall designate another person to publish, for each business day, the "Basket Gold Amount".

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)¹⁵ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

¹⁵ 15 U.S.C. 78f(b)(5).

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

With respect to the proposed elimination of an investor's ability to take delivery of Physical Gold, the Exchange believes that, given the limited use of this feature, as noted above, and the fact that investors have been notified through the 8-K that this feature will be removed, this change will not impact investors' ability to invest in the Shares. The Exchange notes that the Commission has previously approved Exchange listing and trading of shares of gold trusts under NYSE Arca Rule 8.201-E without the ability of individual investors to receive Physical Gold from a trust outside the redemption process utilized by Authorized Participants.¹⁶ Except as described in this proposed rule change, procedures relating to creation and redemption of Shares as applied to Authorized Participants, as described in the Prior Releases, will remain unchanged.

With respect to the proposed elimination of the Government Guarantee as referenced above, because the Custodian intends to provide insurance to the Trust for the Physical Gold held by the Custodian or a sub-custodian, the removal of the Government Guarantee will not impact investors' ability to invest in a product that reflects the performance of the price of gold less the expenses of the Trust's operations.

The Exchange represents that the proposed changes described above are consistent with the Trust's investment objective, and will further assist the Sponsor to achieve such investment objective. Except for the changes noted above, all other representations made in the Prior Releases remain unchanged.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange believes the proposed rule changes, because of the removal of the ability for investors

¹⁶ See note 13, supra.

to take delivery of Physical Gold, like other gold trusts listed under NYSE Arca Rule 8.201-E,¹⁷ and the reduction in certain time frames, regarding delivery of required deposits and other redemption procedures, will enhance competition among issues of gold-based Commodity-Based Trust Shares.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁸ and Rule 19b-4(f)(6) thereunder.¹⁹

A proposed rule change filed under Rule 19b-4(f)(6)²⁰ normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b-4(f)(6)(iii)²¹ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become effective and operative immediately upon filing. The Exchange states that the proposed changes will not adversely impact investors and will permit the Trust to promptly implement the efficiencies associated with

¹⁷ Id.

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²⁰ 17 CFR 240.19b-4(f)(6).

²¹ 17 CFR 240.19b-4(f)(6)(iii).

the proposed operational and administrative changes described in the 8-K. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.²²

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2020-100 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2020-100. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

²² For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See also 15 U.S.C. 78c(f).

your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2020-100, and should be submitted on or before **[INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

J. Matthew DeLes Dernier,

Assistant Secretary.

[FR Doc. 2020-26674 Filed: 12/3/2020 8:45 am; Publication Date: 12/4/2020]

²³ 17 CFR 200.30-3(a)(12).